



# RULE-MAKING ORDER

**CR-103E (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Department of Early Learning (DEL)

**Emergency Rule Only**

**Effective date of rule:**

**Emergency Rules**

- ☐ Immediately upon filing.  
☒ Later (specify) July 22, 2011

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- ☐ Yes ☒ No If Yes, explain:

**Purpose:** DEL is adopting new WAC 170-151-994, 170-295-0065, and 170-296-0172 to implement section 4 of Second Substitute House Bill (2SHB) 1903 (Chapter 295, Laws of 2011), requiring current DEL child care licensees to pay a one-time fee to be used only to fund DEL costs of creating, developing and administering an individual-based/ portable background check clearance registry established in the bill. The registry is necessary for DEL to administer a portable background check process that would allow individual child care workers to change licensed child care employers or work in multiple child care facilities without having to undergo a new DEL background check for each employer or facility as required now. The one-time fee is \$45 per DEL-licensed child care facility, and must be paid or postmarked before September 1, 2011.

**Citation of existing rules affected by this order:**

Repealed: None  
Amended: None  
Suspended: None

**Statutory authority for adoption:** RCW 43.215.060, 43.215.070(2)(c), and 43.43.832(6); chapter 43.215 RCW.

**Other authority :** 2SHB 1903 (chapter 295, Laws of 2011); RCW 43.215.200, and 43.215.215

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- ☒ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

**Reasons for this finding:**

Conducting a background check is integral to determining an individual's character and suitability to provide child care, and for protecting the safety and health of children in child care. RCW 43.215.200, 43.215.215 and 43.43.832(6) provide DEL authority to investigate the criminal background history of and other relevant information regarding individuals: seeking a DEL child care license; wishing to work in child care; or who reside on the premises of a licensed child care center or home.

**Continued in Attachment A.**

**Date adopted:** July 20, 2011

**NAME (TYPE OR PRINT)**  
Elizabeth M. Hyde

**SIGNATURE**

*Elizabeth M. Hyde*

**TITLE**  
Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** July 20, 2011  
**TIME:** 9:15 AM

**WSR 11-15-090**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>3</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>3</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**Attachment A to CR-103E**  
**WAC Chapters 170-151, 170-295, and 170-296**  
**Implementing 2SHB 1903 – Individual-Based/Portable Background Check Registry**

**Reasons for this finding (continued)**

In adopting 2SHB 1903, the Legislature established a new account in the State Treasury specifically for the purpose of funding an individual-based/portable background check clearance registry. Section 4 of the bill states:

*“Effective July 1, 2011, all agency licensees shall pay the department (DEL) a one-time fee established by the department. When establishing the fee, the department must consider the cost of developing and administering the (individual-based/portable background check clearance) registry, and shall not set a fee which is estimated to generate revenue beyond the estimated costs for the development and administration of the registry. Fee revenues must be deposited in the individual-based/portable background check clearance account created in section 5 of this act, and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of this act.”*

Section 5 of the bill states, in part, *“...Expenditures from the account may be made only for development, administration, and implementation of the individual-based/portable background check registry established in section 1 of this act. Only the director of the department of early learning or the director’s designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.”*

The Legislature determined that costs of developing, administering and implementing the individual-based/portable background check clearance registry must be funded through user fees. As provided in section 4 of the bill, DEL has estimated that the initial SFY 2012 cost to create, develop, administer and implement the registry and related systems is approximately \$326,250. Divided by an estimated 7,250 current child care facilities licensed by DEL, the one-time fee amount would be \$45 per licensee – the amount provided in these rules ( $\$326,250 / 7,250 = \$45$ ). See the [DEL fiscal note for 2SHB 1903 as enacted](#) filed with the state Office of Financial Management. DEL must generate the one-time fee revenues early in fiscal year 2012 to develop the initial technology, administration, and fund management capacities of the registry.

The registry must be operational by July 1, 2012, when section 2 of the 2SHB 1903 directs an estimated 41,500 current licensees, child care staff, and others associated with DEL-licensed child care facilities to renew their DEL background check utilizing the individual-based/portable background check clearance registry. Background checks clearances of an estimated 6,500 new licensees, staff and others who enter the child care industry in the state each year will also be entered on the new registry.

DEL plans to develop permanent rules to implement 2SHB 1903, and the department has filed a preproposal statement of inquiry, filing number WSR 11-12-076, to initiate regular rule making.

Filing this rule is consistent with state Office of Financial Management guidance regarding Executive Order 10-06 suspending non-critical rule making, but allowing rules to proceed that are:

*“Required by federal and state law or required to maintain federally delegated or authorized programs;”*  
*“Necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;” and*  
*“Beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects.”*

**End of Attachment A**

NEW SECTION

**WAC 170-151-994 School-age child care centers--Individual-based/portable background check clearance registry--One-time fee.**

(1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

**WAC 170-295-0065 Child care centers--Individual-based/portable background check clearance registry--One-time fee.**

(1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.

NEW SECTION

**WAC 170-296-0172 Family home child care providers--Individual-based/portable background check clearance registry--One-time fee.** (1) As required by section 4, chapter 295, Laws of 2011 (2SHB 1903), beginning July 22, 2011, all agency licensees who are licensed with the department as of July 1, 2011, shall pay a one-time fee of forty-five dollars in addition to any other fees imposed by this chapter.

(2) Fee payments made under this section shall be:

(a) By check, draft, or money order;

(b) Sent by mail; and

(c) Postmarked before September 1, 2011.

(3) Pursuant to RCW 43.215.300, the department may suspend the license of any agency licensee:

(a) Who fails to pay the fee required in subsection (2) of this section until the fee is paid; or

(b) Whose check, draft, or money order is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.

(4) All fees collected under this section shall be deposited in the individual-based/portable background check clearance account created in section 5, chapter 295, Laws of 2011 (2SHB 1903) and may be expended only for the costs of developing and administering the individual-based/portable background check clearance registry created in section 1 of that act.